Howarth, Anita (2013) 'MCTs and universities: new risks, new visibilities and new vulnerabilities'. IAMCR Conference, Dublin 24-29 June.[1]

Introduction

In 2007, an American student captured on mobile phone then distributed a recording of a teacher making scathing comments about a sensitive political issue that violated school policy. The clip went viral (Carvin 2007). As did the ones of a lecturer getting annoyed at a student's loud yawns; another apparently seeking to provoke debate over global warming; another claiming the class is 'full of cheaters' (Stripling 2010); and another on an anti-war veteran 'rant' (Deci 2013). More seriously, a covert video-camera recording of a sexual encounter in a Rutgers dormitory room was disseminated on social network sites was widely attributed to the victim's suicide (Gray 2012). There have also been recent court cases in India and Nigeria into apparent sexual advances made by lecturers towards students and central to these was claims that audio recordings provided evidence of such abuses and counter-claims that the recordings had been doctored (Dar 2013).

What all of these stories have in common is the covert capture of everyday activities on mobile communication technologies (MCTs), the uploading of this onto social network sites where they can disseminated with unpredictable, sometimes tragic consequences. In this way, what were bounded, quasi-private spaces in universities are becoming increasingly porous, giving rise to new visibilities in which previously hidden interactions can be digitally captured on highly portable devices and made public. On the one hand, these developments signify the potential to hold power to account in public (the subject of another paper). On the other hand, there is also potential for harm especially of individual students and staff (the concern here). That is, the new mobile technologies – tablets, smartphones, and any other multi-functional, highly portable communication device - not only facilitate new visibilities, they also present new vulnerabilities around information-privacy concerns. Information-privacy is about the ability of the individual to control the collection, storage and dissemination of personal information. This paper sets out preliminary data on how British universities are responding to the challenges posed by these developments.

The key challenge for universities is that MCT use is pervasive and taken-for-granted; there is considerable potential for pedagogic benefits from incorporating these into teaching and learning practices; but is there a need for universities to seek to govern how they are used within their own spaces and so minimize new vulnerabilities? Is it fair and reasonable to expect universities to do this when they neither own the equipment not have direct control over how and when it is used? Can they still be held accountable for the consequences of the misuse of the technology in these circumstances?

One approach would be to take this line of questioning into the more ethical debates or moral philosophy. This paper is more concerned with the ways in which universities are translating these ethical, abstract issues into concrete policies. This paper first locates this within a history of appropriating technologies into university teaching and touches briefly on the issues that arose in the 1990s around intellectual property, data protection and disability rights. It will then explore how information-privacy concerns differ from these and how MCT's are raising new issues here. Then it will look at the approach to the data and the findings. It concludes by arguing that do need to attempt to govern MCT usages however challenging it is because they have a duty of care obligations towards the students and staff within their spaces. Moreover effective teaching and learning requires a climate of trust; uncontrolled use of MCT with their potential for covert capture and breaches of information-privacy puts this at risk. The other

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concluding reflection is on how generalizable is the concern about information-privacy when the priorities in other countries may be very different and this point I would welcome views from the floor.

Location: history, information-privacy, MCTs and pedagogy

Universities have a long history going back over 100 years of appropriating technologies that would allow them to bring materials from the outside world – for examples, recordings of patient's heartbeats, music or television and film clips – into the classroom to enhance teaching and learning (see Salaberry 2001). For much of this history these initiatives were largely unproblematic. This changed with the digital turn in the 1990s and innovation in printers, photocopiers, video-recorders, computers and the internet because these developments threatened a wide range of interests and created new ones. Universities and governments responded by setting up policies, procedures and protocols that allowed some use of materials within pre-arranged constraints that aimed to protect intellectual property and data protection interests while allowing for some education usage (see Ginsburg 1999). In the UK at the turn of the century there was another development with the introduction of a legal obligation for universities to make 'reasonable adjustments' to facilitate fuller engagement and participation by disabled students. This legal framework meant that an exception was made of disabled students in that some of the restrictions on recording copyrighted material were waivered on condition that this was personal study purposes only and could not be disseminated. .

MCT's are presenting new, very different challenges. First, the older technologies were concerned with the rights implicated in bringing captured material from the outside world into the classroom and how these might be managed. MCTs are about a two way process in which captured material can be brought in and taken out. Second, the same could be said of data protection concerns but these are about management of the institutional collection of personal data and ensuring that in the age of the internet it is not inadvertently lost or put out on the internet. MCT risks are about the ability of anyone with a mobile device to capture any interaction and post it on the internet and the concerns that follow go well beyond data protection to encompass a broader concept of information-privacy.

Information-privacy concerns are about an individual's ability to control the collection, storage and dissemination of personal information about themselves (see Fenwick & Phillipson 2006). Personal information is 'about an identifiable living individual' (JISC 2012). It is not limited to demographic data collected by universities (data protection issues); it also includes sensitive personal information such as expressions of political and religious beliefs, opinions, observations, associations and lifestyle choices that may be part of everyday interactions between individuals and within groups (see Froomkin 2000). Attempts to protect information-privacy rights are premised on the understanding that the unauthorized capture of personal information in any format on any devices poses privacy risks because it potentially exposes individuals to unwanted scrutiny by others; possible discrimination based on their ideas, beliefs or opinions; possible curbs on their freedom to choose what to believe, think or act; or in extreme cases physical harm (see Solove 2004). Concerns about these risks have helped to inform the presumption in the EU that 'generalized harm already exists … we do not need to wait for specific abuses to occur' and that public authorities have a moral imperative to act to protect information-privacy (Solove 2004). This presumption faces particular challenges when dealing with MCTs.

MCTs are pervasive and highly portable. They are also multi-functional in that they combine communicative, content, convergence and connectivity capabilities (see Ibrahim 2010, 2011). What these capabilities mean in practice is that a smartphone can be used to video/audio record an incident or conversation; re)contextualized as new meanings are created and the original context stripped out or altered in mashups; then emailed or uploaded onto social network sites. From there it can go viral. A further complication is that the technologies and the applications on them are constantly evolving so too is usage often in ways that the

designers themselves did not envisage. The university ideal is of a space where free speech and debate are highly valued so in principle seemingly outrageous views that challenge the hegemonies in the wider society should flourish. However, what is legitimate, robust comment in the university context may not be acceptable, appreciated or understood in another context. Furthermore, unauthorized and uncontrolled release of personal information can have damaging – even tragic – consequences as outlined in the introduction.

Given these potential risks, it would not be surprising if universities were to seek to ban MCTs altogether, assuming this was feasible. The problem though is that MCT's, like their predecessors over the past century, have potentially much to offer pedagogy. They bring the prospect of M-learning – the anywhere, anytime accessing of teaching materials by any student with a device. Pedagogic benefits include the use of recordings of teaching sessions whether for revision purposes or by students whose language proficiency or particular disabilities may make it difficult for them to follow a class sessions. There is also strong pressure from students for more recorded material to be made available and MCT's offer a cost-effective alternative to expensive university-provided lecture capture. The consequence is institutional tradition, pedagogic impetus and student demand to incorporate more use of MCTs into teaching. The question here is how British universities are seeking to manage benefits and risks of MCT capture in teaching spaces.

Approaching and analysing the data

The empirical challenge is that understanding of the risks and benefits outlined above is still in its infancy so it is likely that few universities have an MCT-specific policy. It is also necessary to get a snapshot in time of where the sector is. So the approach taken here was relatively unusual in that freedom of Information requests were sent to 121 public universities in Britain requesting their formal policies on recording of lectures, seminars and other university activities. Formal policies are those that have been approved and were in force at the time the requests were made so there was no legitimate reason for universities not to provide this.

The requests elicited an 89% response rate of which 12% of British universities indicated they had MCT-specific policies at the time (late 2011-early 2012). It was decided to focus on these because these universities assume MCT capture is taking place anyway or students want to be able to record for themselves and implicit in the development of specific policies is the assumption that existing policies covering other technologies may be inadequate. Furthermore, it was felt that these universities were in the vanguard of developments. The formal policies they provided were analysed in terms of values and principles underpinning the policy; MCT governance (terms and conditions of use); and consequences of breaches in policy.

Summary findings and analysis

The main finding is of considerable consensus that MCT capture is already taking place in universities but divergence on how to respond to it. Three broad approaches among the universities were identified.

Approach 1 sought to govern MCTs at the points of capture, use and dissemination. The pre-eminence of information-privacy rights were encapsulated in discourses about the right to know, to consent or object to oral or visual recordings. It was assumed that disabled students would be allowed to record but this was not seen as an absolute right. The exceptions to this were the recording of minors, of confidential patient issues, sensitive topics and if other students objected. In these universities the negotiation of competing information-privacy and disability rights was not seen as a zero-sum game; both were seen as having equal validity; and the university was constructed as having a duty of care to safeguard both. Breaches of the terms and conditions of MCT capture were likely to incur disciplinary action by university or professional body.

Approach 2 also sought to govern MCTs at the points of capture, use and dissemination. However, information-privacy rights were truncated. A distinction was made between audio and visual recording: that is, there was a student and staff right to know but not to object to audio recording but a right to know and object to visual recording. Both forms were prohibited where minors or patients were involved. The distinction between audio and visual recordings neutralizes the much potential conflict over disability rights but it also implies the individual can be identified in visual recording but not oral recording and this is problematic. Breaches of the terms and conditions of MCT capture were likely to incur disciplinary action by university or professional body.

Approach 3 sought to govern MCTs at the point of use only. The presumption was that all students would be allowed to record; no distinction was made between oral and visual recording; and there was no recognition in these policies of information-privacy rights – only of courtesies. This avoids any policy conflict between competing rights and the documents justify this on the grounds that law requires students to be allowed to record. There is no mention of any consequences for the misuse of recordings by staff or students.

While those universities that had MCT policies concurred overt or covert recording was taking place; they diverged over how universities should respond in four key areas over whether:

[1] The university should seek to control MCTs at the point of capture, use and dissemination OR only at the point of use and dissemination

[2] Staff should control what may be recorded, when and how OR should it be devolved to students

[3] Staff and students have a right to know, consent and object to recordings OR whether they don't; whether that applies to both audio and visual recordings OR only visual

[4] Information-privacy and disability rights are of equal validity OR disability rights pre-eminent and information-privacy is matter of courtesy not rights

Conclusion

The key finding is that there was a consensus that MCT-capture whether covert or overt is already taking place but considerable divergence over how to govern this and how to negotiate competing interests and rights. This suggests conflict – possibly even confusion – in the British university sector on how to respond. The one option here would be to ignore the problem, possibly arguing that the university does not own the devices, has no direct control over their use in the classroom so cannot really be held responsible for any breaches of information-privacy that results.

I suggest this may not suffice as a response. First, it poses bigger risks not least reputational ones to the university if an inappropriate comment is captured and disseminated or it may open students and staff to vindictive attacks in which captured materials is deliberated edited to damage the credibility of the individual. Second, effective teaching and learning requires an environment of trust so too does the university ideal of free exchange of ideas and beliefs. This exchange is essentially one of personal information and if individuals believe this may be captured, manipulated and disseminated out of context it could well have a chilling effect on what goes on in the classroom. Third, information-privacy is becoming a much bigger issue in public consciousness. This is not only because of recent revelations of government surveillance of social media sites; it is also there in Microsoft's latest marketing strategy which is positioning itself as a protecting of information-privacy.

There is a danger here in presuming a universal concern and understanding of information-privacy when it may not be. Preliminary work has suggested that the primary concern in the USA is about cyber-bullying juxtaposed against a concern to protect the First Amendment principles of free speech even if this damaging to individual privacy. In Asia and Africa there is more concern with the role MCTs might play in technological progress and development. At the same time, students appear increasingly

willing to capture moments of abuse to hold staff to account in ways they could not before. I am unsure so would like to open the question of the generalizability of MCT information-privacy concerns to the floor for discussion.

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